HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal No.200 of 2006

Between:

V. Sreeramulu … Appellant

And

Karur Vysya Bank Limited rep. by its

Branch Manager, Nandyal and others.

… Respondents

::JUDGMENT::

Counsel for the appellant: Sri Minnikanti Laxmi Prasad

Counsel for respondents No.1 to 3: None appeared

Counsel for respondent No.4: Sri Deepak Battacharjee

February 27, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 7-2-2006 passed by the learned Single Judge vide which he dismissed the writ petition filed by the appellant to challenge notice dated 16-5-2005 issued by Karur Vysya Bank Limited (for short 'the Bank') under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the 2002 Act').

Respondent No.2 M/s.Sri Amruthavalli Dall Producer availed Special Over-Draft (SOD) facility of Rs.15 lakhs against hypothecation of raw materials and finished products from the Bank. The appellant, respondent No.3 Sri V. Giridhar and respondent No.4 Sri V. Praveen Kumar created mortgage of the immovable property to secure the loan as guarantors. Due to the failure of respondent No.2 to repay the loan, the Bank issued notice under Section 13 (2) proposing to enforce the security. The notice required respondent No.2 to pay a sum of Rs.17,40,437/- within 60 days with a stipulation that in case of default, action would be taken under Section 13 (4) of the Act. Respondent No.2 did not pay the amount in terms of the demand made by the Bank. Consequently, the latter initiated action under Section 13 (4) and issued notice proposing to sell the immovable property i.e., house bearing Door No.17/144-3 situated in Nandyal Town, Kurnool District.

The appellant challenged notice dated 16-5-2005 by contending that SOD facility availed by respondent No.2 has not been classified as non-performing asset in accordance with the norms prescribed by the Reserve Bank of India vide Circular dated 17-7-2004 and, therefore, the bank had no jurisdiction to initiate proceedings under the 2002 Act.

The learned Single Judge dismissed the writ petition by holding that the writ petition filed against a private Bank is not maintainable because it does not fall within the ambit of the term "State" under Article 12 of the Constitution.

Learned counsel for the appellant argued that the order under challenge is liable to be set aside because the view taken by the learned Single Judge on the maintainability of writ petition suffers from an error apparent. He submitted that the notice dated 16-5-2005 was issued by the bank in exercise of its statutory power under Section 13(2) of the 2002 Act and the appellant was entitled to challenge the same in a petition filed under Article 226 of the Constitution of India on the ground of

lack of jurisdiction and ultra vires.

We have considered the submission of the learned counsel and are inclined to agree with him that the view expressed by the learned Single Judge on the issue of maintainability of the writ petition against the bank is not correct. We would have entertained the appeal, but, keeping in view the fact that an effective alternative remedy is available to the appellant against the action taken by the bank under Section 13 (2) read with Section 13 (4) of the 2002 Act, we do not consider it necessary to call upon respondent No.2 to defend notice dated 16-5-2005 or action taken under Section 13 (4) of the Act.

The Supreme Court and High Courts have repeatedly emphasized that the High Court should be extremely loath to interfere with the action taken by a public authority to recover public dues like taxes, cess, fees, etc., if an effective alternative remedy is available to the aggrieved person. This rule has been applied with greater rigour where the statute under which the recovery is sought to be made itself creates machinery for remedy of the grievance of the aggrieved party. (See **A.V. Venkateshwaran v. R.S. Wadhwani**, **Thansingh Nathmal v. Superintendent of Taxes, Champa Lal v. I.T. Commissioner, J.M & Co. v. Agricultural I.T. Officer, Assam, C.I.T. v. Ramendra Nath Ghosh, Titaghur Paper Mills Co. Ltd. v. State of Orissa, Assistant Collector, Central Excise v. Dunlop India Ltd.** and **State of Goa v. Leukoplast (India) Ltd.**).

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was enacted by the Parliament for recovery of the dues of public financial institutions because a huge sum of one lakh twenty thousand crores was pending recovery from different borrowers and the economy of the entire nation was being adversely affected. A large number of people who took loans and other financial facilities from Banks and other similar bodies / institutions in the name of industrial development frittered away the public money and did not pay the dues for years together. The schemes framed by the Reserve Bank of India for determination of non-performing assets and giving concession to the defaulters also proved futile. In order to redeem the situation, the Parliament had to intervene and enact the 2002 Act and make stricter provision for recovery of public dues.

Section 13 (1) of the 2002 Act, which begins with a non-abstante clause entitles the Banks and financial institutions to recover their dues without the intervention of the

Court and the Tribunal. Section 13 (2) envisages issuance of notice by a secured creditor to the borrowers for recovery of dues. Sub-section (3) of Section 13 provides for giving of details to the borrower of the amount due. Sub-section (3A), which was introduced in the year 2004, entitles the noticee to file a representation or objection with a provision that the concerned secured creditor must decide the same. If the secured creditor comes to the conclusion that the representation or objection is not tenable, then the same has to be conveyed to the borrower within a period of seven days. Sub-section (4) lays down that where the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the modes specified in sub-section (4) thereof for recovery of his secured debt. Section 17 (1) entitles any person aggrieved by the action taken under sub-section (4) of Section 13 to file an application before the Debts Recovery Tribunal having jurisdiction over their area. Sub-section (3) of Section 17 empowers the Tribunal to make an enquiry, give an opportunity of hearing to the borrower and the secured creditor and then pass appropriate order.

Therefore, keeping in view the settled law that the High Court will not entertain writ petition if an effective alternative remedy is available to the petitioner, we do not consider it proper to entertain the appeal. Here, it is apposite to observe that, in such cases, judicial intervention at the interlocutory stages of the action initiated / taken by the secured creditor is warranted only in exceptional cases and that too when the Court is convinced that the action under challenge is wholly without jurisdiction or vitiated due to gross violation of the rules of natural justice. In the case before us, the appellant has failed to show that notice issued by respondent No.1 is without jurisdiction or is vitiated due to violation of the basics of natural justice.

For the reasons mentioned above, the appeal is dismissed.

While dismissing the appeal, we reiterate that this order shall not be treated as an approval of the view taken by the learned Single Judge on the maintainability of the writ petition against the Bank.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

February 27, 2006

Svs/vtv